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No. 221

In the Supreme Court of the United States

October Term, 1950

PRINCE CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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CITATIONS

Cases:

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General Motors Corp., Frigidaire Div. v. *United States*, 163 F. Supp. 854, certiorari denied, 358 U.S. 866 ..... 2, 3, 4, 6

Statute:

Internal Revenue Code of 1939, Sec. 3443(a) (26 U.S.C. 1952 ed., Sec. 3443(a)) 2, 5

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The Court of Claims wrote no opinion.

JURISDICTION

The order of the Court of Claims was entered on April 17, 1959. (Pet. 1a.) The petition for a writ of certiorari was filed on July 16, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether the Court of Claims correctly dismissed the taxpayer's suit for refund of excise taxes on the authority of *Ford Motor Co.* v. *United States*, 156 F. Supp. 554 (C. Cls.), certiorari denied, 358 U.S. 864,

and *General Motors Corp., Frigidaire Div.* v. *United States*, 163 F. Supp. 854 (C. Cls.), certiorari denied, 358 U.S. 866.

STATUTE INVOLVED

Internal Revenue Code of 1939:

SEC. 3443. CREDITS AND REFUNDS.

(a) A credit against tax under this chapter, or a refund, may be allowed or made—

* * * * *

(2) to any person who has paid tax under this chapter with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

* * * * *

[26 U.S.C. 1952 ed., 3443(a).]

STATEMENT

1. The taxpayer is a manufacturer of various appliances including television and radio receivers. (R. 2.) On February 29, 1956, the taxpayer filed a suit for refund of excise taxes in the Court of Claims, alleging that certain expenditures in the fulfillment of express warranties in connection with the taxable sale of its articles constituted bona fide discounts, rebates or allowances within the meaning of Section 3443(a)(2) of the Internal Revenue Code of 1939, *supra*. (R. 1–10.) The petition showed that, with its television sets and other products sold to dis-

tributors or dealers, the taxpayer issued a printed warranty running to the ultimate retail purchaser. The taxpayer thereby warranted the article "to be free from defects in material and workmanship" and agreed "to making good any part" which was returned to it within a stated period by the retail purchaser through the taxpayer's distributor or dealer and which, upon examination, the taxpayer was satisfied was defective. (R. 9.)

On November 13, 1958, the Government moved for a judgment on the pleadings on the authority of *General Motors Corp., Frigidaire Div.* v. *United States*, 163 F. Supp. 854 (C. Cls.), certiorari denied, 358 U.S. 866, and *Ford Motor Co.* v. *United States*, 156 F. Supp. 554 (C. Cls.), certiorari denied, 358 U.S. 864. (R. 17–27.) The taxpayer filed an opposition to this motion on the ground that its claim was essentially different from the *Ford* and *General Motors* cases. (R. 29–72.) The ground of distinction claimed by the taxpayer was that it did not repair or replace the defective part or reimburse its vendees (the dealers and distributors) for the actual cost of repairs or replacements, but instead simply gave the dealer or distributor a credit in a pre-determined amount for any defective part returned to it pursuant to the warranty. (R. 37.) In support of its opposition, the taxpayer submitted an affidavit of its controller, Barenther. The Barenther affidavit alleged that the taxpayer, by its agreements with its distributors, could satisfy its warranty obligation by giving the distributor a credit in a fixed amount equivalent to the value of the replacement part, and

the distributor and retail dealers assumed the burden of all labor costs incident to the replacement. The affidavit further alleged that upon receipt and inspection of a defective part covered by the warranty, the taxpayer gave its distributors a credit for the part without any inquiries as to what the dealer or distributor had done for the retail purchaser; that so far as the taxpayer was concerned, the dealer or distributor could have simply adjusted the retail price to the retail purchaser or replaced the defective part with a part of some other manufacturer. (R. 57–62.) On these facts, the taxpayer insisted that its fulfillment of the warranty by this method constituted a statutory "bona fide discount, rebate, or allowance" on the taxable sales price of the warranted articles to distributors, not a repair or replacement of the defective part. (R. 54.) The taxpayer also requested leave to introduce evidence to prove the facts so alleged. (R. 52.)

In its reply, the Government contended that, accepting the facts set forth in the Bareuther affidavit, the taxpayer was nevertheless simply fulfilling its obligations under the warranty by reimbursing its dealers and distributors for the cost of a defective part. (R. 73–86.) After argument on the motion (R. 86), the Court of Claims granted the Government's motion for judgment on the pleadings and dismissed the taxpayer's petition on the authority of the *Ford* and *General Motors* cases. (R. 87; Pet. 1a.)

ARGUMENT

1. The substantive question involved in this case is controlled by the *Ford* and *General Motors* decisions, and no other question requiring review by this Court is presented. *General Motors* established that the cost to a manufacturer of repair or replacement of parts of its products, warranted to be free from defects in material and workmanship, was not a price readjustment within the meaning of Section 3443(a)(2), entitling the taxpayer to a proportionate refund of the excise tax on the sales price of the product. *Ford* held that it made no difference whether the cost was borne directly, by the manufacturer making the repair or replacement itself, or indirectly, by the manufacturer reimbursing the dealer or distributor making the repair or replacement. The facts of the instant case are only a variation of the *Ford* facts: all the taxpayer here offered to prove was that it reimbursed its dealers and distributors in a pre-determined amount for any defective part returned to it, without further inquiry. Taxpayer's method of paying for the replacement of the defective part may have been simpler and more efficient than that involved in the *Ford* case—since it rendered unnecessary any detailed supervision of the relations between the retail purchaser and its dealers and distributors—but it was no different in substance. The return of a defective part was enough to invoke the taxpayer's obligation under the warranty; it was also enough to establish that, by crediting its dealer or distributor through whom the part was returned to it with the cost of the defective part, the taxpayer was simply bearing the cost of ful-

In discussing this provision, in its report, the House Ways and Means Committee left no doubt as to its meaning:

> "This last provision covers readjustments such as cash or quantity discounts, credits for return of goods or containers, *and any other bona fide rebate or allowance amounting to a change in the sale price.*" (Emphasis supplied.) (H.R. Rep. No. 708, 72d Cong., 1st Sess., p. 39 (1932))

filling its warranty to the retail purchaser and was not readjusting the price paid to it by the dealer or distributor. In short, the facts of the instant case present nothing that was not decided in *Ford* and *General Motors*.

2. Taxpayer's procedural arguments have no greater merit. The contention that the motion for judgment on the pleadings admitted the conclusory allegation of law that the credits were statutory price adjustments (Pet. 2) is elemental error. The claim of a denial of due process, on the ground that there was an issue of fact as to whether the taxpayer made a price adjustment or incurred a cost in fulfillment of its warranty, is equally unsound. The Government admitted, for purposes of the motion, all the facts alleged by the taxpayer in its petition and in the Barcuther affidavit, and the only question was that of law whether on those facts the credits could be characterized as "allowances" within the meaning of Section 3443(a)(2). The court properly held that they could not.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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